

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Partitioning, Disaggregation, and Leasing)	WT Docket No. 19-38
of Spectrum)	
)	

REPLY COMMENTS OF THE RURAL WIRELESS ASSOCIATION, INC.

The Rural Wireless Association, Inc. (“RWA”) files the following reply comments in response to comments filed in the Federal Communications Commission’s (“FCC” or “Commission”) Notice of Proposed Rulemaking (“*NPRM*”) in the above referenced docket.¹

RWA agrees with several commenters that many of the purported license partitioning, disaggregation, leasing, and network build-out “problems” that Congress attempted to fix through Section 616 of the MOBILE NOW Act are in fact symptoms of a problem inherent in primary-market FCC spectrum auctions: namely, the FCC’s using of geographic area license sizes that are too large.² Furthermore, RWA believes that as more and more license bands get released for commercial use in the years and decades ahead, the Commission needs to modernize

¹ *In the Matter of Partitioning, Disaggregation, and Leasing of Spectrum*, Notice of Proposed Rulemaking, WT Docket No. 19-38, FCC 19-22 (released March 15, 2019) (“*NPRM*”).

² MOBILE NOW Act, Pub. L. No. 115-141, Division P, Title VI, § 616.

its Universal Licensing System (“ULS”), or re-launch its Spectrum Dashboard, to make licensing queries more user-friendly, intuitive, and incorporate greater visual and mapping functionality.

However, RWA disagrees with some commenters who suggest that the FCC should: (1) provide incentives to *large* carriers/licensees to help them lease, partition, or disaggregate spectrum; (2); extend the proposed performance rules that relax build-out requirements to non-common carriers (*e.g.*, incumbent service providers, cable companies, wireless Internet service providers); and (3) remove any and all barriers to secondary market transactions, including by streamlining the approval process for leases and transfers.

I. THERE IS WIDESPREAD SUPPORT IN THE RECORD FOR SMALLER LICENSE SIZES IN FUTURE SPECTRUM AUCTIONS.

There is an inherent problem in the spectrum marketplace today, and it begins with those winning FCC auction bidders acquiring more licenses than they can build-out in a timely fashion, and those acquired licenses being too large in terms of geographic size. The simplest solution to fixing this problem is having the FCC “right size” its spectrum licenses when it converts spectrum to commercial use and simultaneously establishes service rules and license sizes. To the extent that leased spectrum, partitioned spectrum, or disaggregated spectrum is put to a better use by a secondary licensee, this is because the spectrum was not appropriately licensed to the original licensee. RWA has been a long-time proponent of having the Commission use Cellular Market Areas (“CMAs”), or smaller, license areas, and in the case of high-band spectrum, using licenses the size of counties. The National Rural Electric Cooperative Association (“NRECA”)³ and the America Petroleum Institute (“API”)⁴ agree with this concept.

³ NRECA Comments at p. 5.

⁴ API Comments at p. 2, Section 4.

Accordingly, in all future FCC spectrum auctions, the Commission should offer licenses that use smaller geographic areas that will expedite the deployment of actual 4G and 5G services and reduce the need for carriers to lease, partition, or disaggregate spectrum in order to have a second licensee fulfill the original build-out or performance requirements.

II. THE MODERNIZATION OF THE COMMISSION’S UNIVERSAL LICENSING SYSTEM, OR A RE-LAUNCH OF THE COMMISSION’S SPECTRUM DASHBOARD, WILL DEMOCRATIZE PUBLIC ACCESS TO SPECTRUM HOLDINGS AND ENCOURAGE RURAL MARKET BUILD-OUT.

Several commenters noted that the secondary spectrum markets operate inefficiently, and that a modernization of the information technology databases that track the various spectrum holdings is a significant contributor to that inefficiency. CTIA – The Wireless Association (“CTIA”) recommended that the Commission revive its dormant “Spectrum Dashboard” that was significantly more user-friendly than the current Universal Licensing System.⁵ Select Spectrum LLC urged the Commission to “invest money and expertise to improve the reliability and functionality of ‘ULS’.”⁶ Even the Dynamic Spectrum Alliance, which is arguing for a new “dynamic [spectrum] database,” acknowledged that not only does there exist today an “inability for potential buyers to obtain information on available spectrum”⁷ but also that “[f]inding available spectrum” is “particularly time-consuming and costly.”⁸ To the extent the Commission improves the transparency of commercial spectrum holdings to the general public (whether via the ULS or the Spectrum Dashboard or something new), the more likely investors, entrepreneurs,

⁵ CTIA Comments at p. 2.

⁶ Select Spectrum LLC Comments at p 2.

⁷ Dynamic Spectrum Alliance Comments at p. 6.

⁸ *Id.* at p. 4.

and rural carriers will seek out fallow spectrum held by current licensees or even the FCC. RWA recognizes that the Commission's budget to improve licensing databases and mapping systems is limited, but such improvements will promote rural wireless build-out in a more expedited basis and without waiting for licensees to partition, disaggregate or lease spectrum towards the end of their initial terms.

III. THE COMMISSION SHOULD STOP ENCOURAGING LARGE CARRIERS AND OTHER LICENSEES WHO FAIL TO EXERCISE "PORTION CONTROL" WHEN BIDDING ON LICENSES IN FCC SPECTRUM AUCTIONS

The American Petroleum Institute, perhaps unintentionally, highlights a glaring problem in the wireless marketplace today. It claims that its members have "reported that efforts to acquire spectrum from major telecommunication carriers have not be [sic] effective" due in large part to "a reluctance by the large carriers to encumber their unused spectrum based on competitive matters."⁹ Nationwide carriers/licensees, because of their clout, sit on spectrum for long periods of time after an FCC auction and have little intention of allowing competitors to access this spectrum. API's members are obviously frustrated, and RWA's members know this feeling all too well. Unfortunately, the API's solution – namely extending various "positive" incentives to large carriers and licensees - - is completely misguided. Once again, the solution to reducing the amount of fallow spectrum in the U.S. is not to make it easier for large licensees and nationwide carriers to sit on spectrum until the last minute and then selectively jettison small slivers of spectrum in hard-to-serve rural markets. Rather, the Commission should explore ways to promote small and rural carrier participation in primary spectrum auctions.

⁹ API Comments at p. 2, Section 2.

When the Commission unleashes spectrum for LTE, 5G, IoT or some future paradigm-shifting communications technology, its interest is to make those airwaves (controlled by the American citizenry) available for commercial use and put them to their best use. Giving carriers like AT&T, Verizon, or T-Mobile an all-you-can-eat voucher at the spectrum buffet and then having rural areas sit idle and unused is not putting spectrum to its best and highest use. Commission policies that encourage spectrum hoarding at the time of initial auction immediately put rural markets behind the proverbial eight-ball. First, those small company and rural market carriers that *want* to serve small-license-size markets are foreclosed from obtaining licenses to serve their target markets because the license sizes created by the Commission are too big. Second, the large carriers/licensees, after winning the large licenses at auction, wait to deploy or fail to deploy services in the rural portions of these large-license markets. Rural consumers fall on the wrong side of the digital divide because this problem is repeated time-and-time again, whether with Low-Band licenses, Mid-Band licenses, or especially now with High-Band licenses. In order to stop this cyclical problem of rural disenfranchisement and the constant need for spectrum leasing, partitioning, and disaggregation, the Commission should dis-incentivize large carriers and licensees from acquiring large swaths of spectrum at every FCC auction, not encourage such behavior.

IV. IF THE COMMISSION ADOPTS REDUCED PERFORMANCE REQUIREMENTS, IT SHOULD LIMIT THE BENEFICIARIES TO SMALL COMMON CARRIERS IN RURAL MARKETS, AS INTENDED BY CONGRESS.

In its *NPRM*, the Commission asked whether or not it “should consider applying any rule revisions stemming from this proceeding to an expanded class of licensees beyond those

Congress requires it to consider.”¹⁰ Congress was abundantly clear in Section 616 of the MOBILE NOW Act when it directed the Commission to use the definition of “carrier” found in Section 3 of the Communications Act of 1934, as amended (“Act”).¹¹ Indeed, the Commission notes that “[a]s a threshold matter, the MOBILE NOW Act directs the Commission to focus on programs that would promote spectrum availability for ‘covered small carriers,’ a term that as noted above encompasses only common carriers.”¹² The legislative intent behind Section 616 could not be clearer, and the Commission in its *NPRM* reiterates which services are associated with “covered geographic licenses.”¹³ Nonetheless, several commenters are pushing to expand the proposed rules (specifically those that would allow covered small carriers to lease, partition, or disaggregate certain licenses) such that non-common carriers would be included.¹⁴ This is wrong, not just for the obvious legal reasons, but also for important policy reasons.

Both NRECA and WISPA wish to expand the list of entities eligible to benefit from revised rules beyond covered small carriers (*i.e.* common carriers). NRECA correctly recognizes that the term “covered small carriers” only encompasses “common carriers,” and excludes “private, internally provided communications.” Nonetheless, it argues that “[t]he Commission should also apply any rule revisions to the use of spectrum to provide advanced

¹⁰ *NPRM* at ¶ 13.

¹¹ 47 U.S.C. § 153(11).

¹² *NPRM* at ¶ 20.

¹³ *NPRM* at FN. 5. The classes of licenses under consideration in this *NPRM* are “covered geographic area licenses,” which are defined to specifically exclude licenses awarded pursuant to numerous subparts of Part 90 (Private Land Mobile Radio Services) and Part 95 (Personal Radio Services).

¹⁴ NRECA Comments at p. 7, Section C; CCA Comments at p. 6; WISPA Comments at pp. 4-7; and Midcontinent Comments at pp. 3-6.

telecommunications on a non-common carrier basis and for use of spectrum for private, internal services.”¹⁵ Similarly, WISPA has argued that “[l]imiting new rules only to ‘common carriers’ would arbitrarily limit the pool of eligible providers, decrease the vibrancy of the secondary market for larger licensees, and increase the possibility that rural areas remain unserved.”¹⁶ A common carrier designation is not some arbitrary moniker that carries no practical significance. Rather, common carriers have a heightened duty compared to other telecommunications service providers and are legally obligated to provide American consumers (and other carriers) with levels of service and rates that are by their very nature regulated and protected. This limitation is anything but arbitrary. What NRECA and WISPA are seeking is a fundamental change in the use restrictions placed on certain wireless licenses, and this type of rule change requires a dedicated notice-and-comment rulemaking process, especially because Congress did not intend for non-common carriers to be eligible in this proceeding. This proceeding is the wrong vehicle, and the arguments put forward by both organizations are merely an end-run around well-established law and Commission rules. To be clear, nothing today prevents either group’s members from acquiring leased, partitioned or disaggregated licenses in the secondary markets - so long as those lessees or licensees follow the rules prescribed for common carriers. For these reasons, the NRECA and WISPA arguments about expanding eligible licensees should be rejected.¹⁷

¹⁵ NRECA Comments at p. 7, Section C.

¹⁶ WISPA Comments at p. 6.

¹⁷ *NRPM* at FN 5.

V. ALLOWING UNBRIDLED SPECTRUM TRANSACTIONS IN THE SECONDARY MARKETPLACE WILL ONLY ENCOURAGE MORE LICENSE ACQUISITIONS AND LEASES THAT ARE NOT IN THE PUBLIC INTEREST.

As discussed above, the Commission’s daily review of all proposed license transactions is anything but arbitrary. Each proposed transaction is reviewed to make sure that it is in the public interest. CTIA has asked the Commission to “[r]emove any barriers to secondary market transactions” and streamline the approval process for leases and transfers.¹⁸ While RWA does not oppose CTIA’s proposal for a reduction in oversight on one-to-one spectrum swaps when two licensees are trading equal amounts of spectrum in the same band and in the same market (provided there are no other extenuating circumstances), RWA strongly opposes CTIA’s request that all spectrum leases only require that the parties provide the Commission with “prior notification” instead of gaining actual Commission approval. Adopting this particular CTIA proposal to remove an alleged “barrier” to secondary market transactions would be a mistake. The Commission’s review of license applications, whether short term leases, spectrum manager leases, or *de facto* transfer leases, is an important public policy service. Self-regulation by lessors and lessees could lead to questionable commercial transactions, and no advance notice to the public or chance for outside parties to submit comment on the proposed applications. At a time when CTIA’s members today hold well over 99% of the commercial mobile wireless spectrum that would be subject to these proposed rules, the FCC should, if anything, pay *more* attention to spectrum transactions, not less.

¹⁸ CTIA Comments at pp. 2, 9-10.

VI. CONCLUSION

RWA supports the Commission's various efforts to put spectrum to good use for the American public, including in often-neglected rural markets. However, the simple solution to correcting the problem of FCC licensees unable to build-out networks in a timely manner lies not at the end of a license term, but rather, before licenses are even awarded. Specifically, the Commission needs to create geographic license sizes that are "right sized" and conduct auctions that offer small and rural carriers bidding credits. This will provide small, rural carriers with a legitimate opportunity to acquire and build-out wireless licenses in remote and rural markets on a timely basis, while simultaneously preventing larger licensees and carriers from hoarding licenses, forcing them to acquire only those licenses which they truly need and build out their licenses in a timely manner.

Respectfully submitted,

RURAL WIRELESS ASSOCIATION, INC.

By: */s/ Caressa D. Bennet*

Caressa D. Bennet, General Counsel
Daryl A. Zakov, Assistant General Counsel
5185 MacArthur Blvd., NW, Suite 729
Washington, DC 20016
(202) 551-0010
legal@ruralwireless.org

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